

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S  
APPENDIX**





Docket No.

**77-1022**  
**77-1023**  
**77-1024**

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee

v.

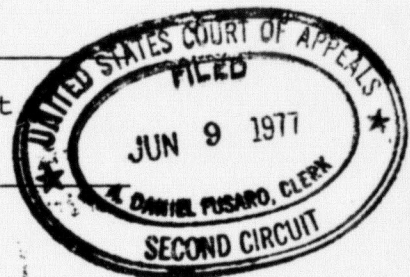
BERNARD WOODMANSEE, SR.,  
JACKY E. DuBRAY and  
ROY M. HAMLIN

Appellants

---

Appeal from the United States District  
Court for the District of Vermont

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APPENDIX FOR THE UNITED STATES

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District of Vermont

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- A. Hello
- C. Hello is Bernard there?
- A. No uh mother hold it just a minute please mother hold the dog in there, sombbodys out here. Whos this please?
- C. This is Mike Churchill
- A. He's been waiting for your call.
- C. He has? Do you know where he is.
- A. Do you have the other number?
- C. Yeah
- A. OK call that
- C. Allrighty
- A. Cause he just left here
- C. OK
- A. Allrighty
- C. Yup
- A. Bye
- C. Bye

The preceeding call was to 878-8496 Michael Churchill just talked to Virginia Reynolds, known as Dixie and she advised for him to call the other number being the 864-7663.



A. Hello

A. Hello is Bernard there?

A. Who's calling?

C. Mike Churchill.

A. Yes

A. How you doing?

A. Great You coming up?

C. Yup

A. Where are you, in town?

C. I'm at the rest area in Winooski.

A. Umhum you know where it is.

C. Everything set?

A. They ain't here yet but they'll be here shortly, just come up and if you need some money to cruise around with for a couple hours, I'll give you some. OK?

C. OK

A. Its going to be, don't worry.

C. All right

A. All right Bye

Preceeding call made on May 21st, 1976 time 1530 hours to telephone number 878-8496,

the male subject was Bernard Woodmansee and Michael Churchill conversing.

Today's date is May 21, 1976, a Friday morning.  
Time now is 8:30 A.M., we are going to presently call  
Bernard Woodmansee. Present here is Michael Churchill  
and he will be dialing here in a minute.

R Hello.

C Hello, is Bernard there?

R No he isn't.

C He isn't.

R Who's calling please?

C Mike Churchill.

R Oh, well you can call back in a little while if its  
you.

C Okay

R Okay

C Yup.



(1) (2)

A. Hello

C. Hello is Bernard there?

A. Just a minute. Hello

C. Hello Bernard?

A. Yup

C. This is Mike

A. Yeah whats up?

C. Well I'm here.

A. Oh your here in town?

C. Yeah I'm at the rest area just before, I think its the Essex Jct. exit.

A. I've gotta talk to you

C. OK

I want you to stay in town too for an hour or two because I ain't got nothing yet but I might have something but there is something I gotta talk to you about for next Friday, I've gotta talk to you personally.

Want to meet at the Howard Johnsons, same place.

All right in about  $\frac{1}{2}$  an hour.

OK

OK

All right. Yup Bye

The preceeding call was made by Michael Churchill to 878/ from 878-2755 to 864-7663  
Bernard Woodmansee Sr. Time of call 10 of 4, May 15, 1976.

- A. He...
- C. Hello is Bernard there
- A. Just a second - Hello
- C. Hello
- A. Yeah
- C. How ya doing?
- A. Whos this
- C. Its Mike
- A. Well where are ya, waiting for ya all day.
- C. Hey, hey, those travelers checks are moving fast and their all done with, I got 2 grand at the house right now and I gotta go meet some guys in the southern part of New Hampshire, they got the rest of the money so what I'm going to do is call you at 10:00 tomorrow morning, you can have either you or your son meet me in Montpelier.
- A. OK
- C. OK
- A. Where ya going to meet, Oh you'll tell me in the morning where to meet, OK
- A.
- C. Yup right and gees I'll take 10 more
- A. Well alright, we want to get them going, I want to get these guys out of my hair their bugging me.
- C. Don't you worry they'll be all gone,
- A. OK
- C. No problem at all
- A. OK going good tho right?
- C. Right, their gone. I just gotta go over to the southern part of New Hampshire and pick up the rest of the money.
- A. All right
- C. OK
- A. So call me tomorrow at 10:00 o'clock, OK
- C. I'll call you 10 sharp
- A. Hey listen, your going to have a 150 more of those big baloons next week.
- C. All right
- A. All right



5a

C. OK

A. All right I'm going to call somebody and get them off my back, all right

C. OK

A. OK

C. All right, bye

The preceeding call made by Michael Churchill to Bernard Woodmansee Sr. at telephone number 864-7663 on May 22nd, 1976. Time of the end of the call was 9:35 hours. Present in the room was Tpr. LeClair, Tpr. Fields and this officer Tpr. Ruggiero.

- A. Hello
- C. Hello is Bernard there?
- A. Yup                      Good morning
- C. Hey what are you doing Bernard.
- A. I was waiting for your call.
- C. Hey listen everything is set.
- A. OK where do you want to meet?
- C. You know, you get off in Montpelier
- A. Yeah
- C. You know where the Stockyard Lounge is?
- A. Stockyard Lounge?
- C. Yeah
- A. I can find it
- C. Its just, you know, you just get off the Exit go to your first set of lights and its right on your left hand side, theirs a caboose there, a big lounge.
- A. Stockyard Lounge
- C. Yup
- A. Thats the name of it? OK are you leaving White River right now.
- C. No I got a few things to do and I'll be headed up, hows about 1:30 sound?
- A. 1:30
- C. Yeah
- A. Can't make it, gees I'd like to make it quicker than. that, I got something else I gotta do.
- C. Maybe I see I got that Volkswagen and it isn't
- A. Couldn't you make it for 12:30.
- C. OK
- A. Cause I want to be back in Burlington not later than 1:30.



6a

- A. OK
- C. And listen how much more you going to bring me so I can tell my boys to get ready
- A. 6
- C. huh?
- A. 6
- C. Your going to bring me back 6
- A. Yup
- C. OK, OK fine
- A. Hey listen
- C. Yeah
- A. And ya know they should work today to.
- C. Oh ya their going to
- A. Get right on this
- C. Their going to be going down to
- A. They got keep right on this
- C. Hey how were they in Massachusetts, were they to hot down there you think or what.
- A. I'll know by the time I get there.
- C. OK cause thats where their going to head a few of my boys
- A. OK I can see no reason why not
- C. OK
- A. OK
- C. Allrighty, bye
- A. Bye

The preceeding call made by Michael Churchill to Bernard Woodmansee at 878-8496, May 23rd 1976, time now is 10:30.

## WITNESSES - CREDIBILITY

7

### Generally

*substance*

You the jury are the sole judges of the credibility of the witnesses and of the weight their testimony deserves. You should carefully scrutinize all testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. You are under no obligation either to accept or to reject all of what a witness has testified to. In your sole discretion, you may believe all or part or nothing of a witness's testimony.

### Testimony of an Informer

[ The testimony of an informer who provides evidence against a defendant for pay or for immunity for punishment or other like consideration, or for personal advantage or vindication must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by his self-interest or by prejudice against a defendant. ] In weighing the testimony of a witness who testifies under any promise of immunity or reward, the jury must consider that such promise of itself is a strong impelling reason for the witness to color and fabricate his testimony, and that such testimony must be weighed with a great deal of care and caution.

Michael Churchill was an informer in this case. In considering his testimony you should consider whatever payments, promises or other consideration he received in exchange for his activities and testimony. As with other witnesses, you may believe or disbelieve all or nothing or any part of what he has testified to.



7  
False Testimony

In considering the testimony of a witness, if the jury finds that such witness has deliberately and intentionally sworn falsely to a material fact, you have the right to distrust such witness's testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you think it deserves.

gan.

8

12. The credibility of a witness is solely for you, the jury to decide. Subject the testimony to the same scrutiny that you would subject any important conversation or act. The mere fact that a witness was called by the government or is a government agent does not entitle such a witness' testimony to more weight or credence than that of any other witness.

In determining the credibility of witnesses, the jury would also consider the manner of their testifying, whether they were frank and open or whether they were evasive and should take into consideration the witness' character and any admitted acts of wrongdoing.

The degree of credit due a witness should be determined by his character and conduct, by his manner upon the stand, his bias or impartiality, the reasonableness or otherwise of the statements he makes and the strength or weakness of his recollections viewed in the light of all the other testimony, facts and circumstances in the case.

The jury is the exclusive judge of the weight of the evidence here and of the credibility of the witnesses. If the jury finds that any witness has not testified truthfully they may disregard such portion of his testimony, and they may also disregard his entire testimony. In determining whether a witness is telling the truth, the jury may take into consideration his conduct and the manner of testifying on the witness stand and his admission of conviction for crimes.



CLERK  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

(10)

United States of America	:	
	:	
v.	:	Criminal No. 76-38
	:	
Bernard Woodmansee, Sr.,	:	
Jacky E. DuBray,	:	
Roy M. Hamlin and	:	
Virginia Reynolds	:	

ORDER

In the above captioned cause it is hereby ordered  
as follows:

1. Trial will commence with the drawing of the jury at 9:30 A.M. on Wednesday, October 27, 1976 at the Courthouse in Burlington rather than at 1:30 P.M. on Tuesday, October 26, 1976 as presently scheduled.

2. ~~The defendants jointly~~ will be permitted a total of twelve preemptory challenges. Challenges will be exercised at the bench by counsel for the defendants in rotation in the order that their client's name appears in the heading of the indictment.

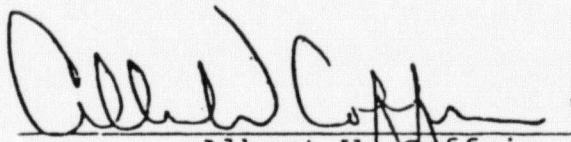
3. The Court, rather than individual counsel, will conduct the voir dire of the prospective jurors. Specific questions which counsel desire to be asked by the Court will be considered if filed in writing with the Court--preferably by 12:00 noon on Friday, October 22, 1976, but in any event no later than 12:00 noon on Monday, October 25, 1976. Requests by counsel for additional questions to be asked on voir dire in response to specific answers to particular questions by prospective jurors shall be submitted in writing at that time for the Court's consideration.

4. As requested by certain of the parties, the jury members and alternates will be sequestered in accordance with an Order of Sequestration filed this date.

5. During the course of trial, any objections made to the testimony of a witness by counsel for any of the defendants shall be deemed an objection as to all defendants without the necessity of joining therein unless a defendant specifically requests that such an objection not be so considered as to him or her.

6. An informal pretrial conference will be held at 3:00 P.M. on Tuesday, October 26, 1976 at which all counsel are expected to attend. At that time, the mechanics of trial will be discussed as well as any other items of interest to the Court or counsel...

Dated at Burlington in the District of Vermont,  
this 20th day of October, 1976.

  
Albert W. Coffrin  
District Judge



1 Your Honor.

2 THE COURT: Anything else gentlemen?

3 MR. KILMARTIN: We believe in view of the presen-  
4 tations to the Court at all stages of the pre-  
5 trial proceedings that the allocation of Bernard  
6 Woodmansee of three preemptory challenges is un-  
7 fair.

8 THE COURT: Well, it is not exactly what I have afforded.  
9 I have afforded the defendants a total of twelve  
10 challenges between them, assuming in most cases  
11 they can probably agree upon who should be  
12 challenged, but should it develop amongst them-  
13 selves that they can't, they are entitled to  
14 exercise at the bench in sequence a challenge  
15 apiece. I might say that the Amended Rules, or  
16 the Rules that have been cited to the Court as  
17 amended and taking effect as of the first of  
18 August of this year, as far as being determined,  
19 and I recall the effective date had been defer-  
20 red for a year....I have January 1, and it is  
21 true, rather than ten challenges average...the  
22 defendant is correct....I have increased that to  
23 twelve, and the Government will have a total of  
24 six challenges.

25 MR. KILMARTIN: We would simply ask the Court...



1     THE COURT:   At this point the Court has concluded its Voir  
2                   Dire of the panel, in general, and proposes at  
3                   this point to excuse those who have indicated  
4                   they have no knowledge about the case or any of  
5                   the defendants, and will individually interrogate  
6                   those who have indicated some knowledge about  
7                   the case or the defendants. Are there any  
8                   specific questions that counsel wish to have  
9                   the Court ask at this time.

10    MR. KILMARTIN: Your Honor, it is our position  
11                   that the Court pose the question relating to  
12                   whether or not an individual has pending criminal  
13                   charges. I did not get the entire question but  
14                   it was framed in such a way as to call for more  
15                   than a yes or no answer, and the jury was en-  
16                   tirely silent, and the question required a res-  
17                   ponse beyond yes or no or silence, and the Court  
18                   did not further inquire on that question. In  
19                   addition, it's difficult for us to accept the  
20                   response to the last four or five questions  
21                   posed by the Court in view of Mrs. Ball's pre-  
22                   vious comments.

23    THE COURT:   I have already told Mrs. Ball I am going to speak  
24                   to her specifically later.

25    MR. KILMARTIN: I understand that.



1 THE COURT: Do you have any questions you want the Court to  
2 consider at this time.

3 MR. KUPERSMITH: Specifically in relation to  
4 their familiarity with Mr. Woodmansee?

5 THE COURT: No, at this particular time the ones who indi-  
6 cated that they have some familiarity will be  
7 interrogated separately.

8 MR. KUPERSMITH: I would ask the Court to ask  
9 the same question to the effect if they do have  
10 some familiarity with Mr. Woodmansee whether  
11 they would make any inference about people  
12 associated or anything.

13 THE COURT: I will do this of those individuals we are going  
14 to interrogate separately.

15 MR. KUPERSMITH: This is for the panel as a whole?

16 THE COURT: Call that to my attention and if I don't, I will.  
17 I will ask the ones further questions about  
18 pending criminal charges.

19 MR. KILMARTIN: I am sorry I did not get the  
20 exact wording down.

21 THE COURT: I will ask it specifically...do any of you ladies  
22 and gentlemen have an opinion.

23 MR. KILMARTIN: Let me see if I can better re-  
24 call...one question was about family being em-  
25 ployed by the Government and on the question



1 relative to prejudice, and then there was a long  
2 question after that, and before your question  
3 concerning their participation and deliberations  
4 ....it was in between those.

5 THE COURT: What specifically would you like me to ask...  
6 and I will ask it.

7 MR. KILMARTIN: Your Honor, it was a long and  
8 involved question which required the jury, each  
9 juror to answer the question...I am sorry, I  
10 don't recall it better.

11 THE COURT: Number 11?

12 MR. KILMARTIN: No....I am sorry.....

13 THE COURT: Will you specifically tell me what you would  
14 like to have me ask at this time and I will be  
15 inclined to ask it?

16 MR. KILMARTIN: My objection is I noted it was  
17 to the particular question, and I can't locate  
18 it better for the Court than what I have done.

19 MR. LINNAN: I haven't been damaged.

20 THE COURT: I have that in mind...I will take care of it  
21 along the line.

22 (End of bench conference)

23 THE COURT: Now the ladies and gentlemen of the jury who  
24 are sitting in the rear of the room, because they  
25 have not been called to sit in the box as yet,

(16)

1 of the panel I am going to ask that you do not  
2 discuss this case with one another in any way,  
3 and again to remove that possibility I am going  
4 to ask the United States Marshal be with you in  
5 the jury room. If jurors two, four, six, ten  
6 and eleven will retire in the jury room. Jurors  
7 one, three, five, seven, eight, and nine, with  
8 the exception of Mrs. Johnson, I'm going to ask  
9 to retire, to go out the other door, and I don't  
10 see a United States Marshal in the Courtroom...  
11 here he comes...Mr. Hansen, I'm going to ask you  
12 to take jurors three, five, seven, eight and  
13 nine into another room on the other side if you  
14 would at this time...and you, Mr. Minton.

15 Do you feel kind of lonely, Mrs. Johnson?  
16 You will have company soon. All right, now in  
17 response to a question that I asked you, you  
18 indicated that you had heard of Mr. Woodmansee;  
19 is that right?

20 A. That's right, Your Honor.

21 Q. And now will you speak up so counsel can  
22 hear you. In what respect or how did you learn  
23 of Mr. Woodmansee?

24 A. Just in the paper, but I....I don't recollect  
25 what it said. It is just his name is familiar



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to me, and that is about it.

Q. In any particular capacity is his name familiar to you?

A. No, other than what you read earlier.

Q. In other words what knowledge you may have of Mr. Woodmansee derives from an account that may have appeared in the paper with reference to this particular matter.

A. Right, but it was just a name more than anything else, because I didn't read....

Q. You didn't read the article?

A. I did not really read the article, no.

Q. How about television, have you ever heard about Mr. Woodmansee on the television?

A. Yes, but I didn't pay any attention to it.

Q. So is it fair to state then you don't have any real knowledge of Mr. Woodmansee?

A. That's right, Your Honor.

Q. And I take it you have drawn no conclusions concerning him?

A. No, sir.

Q. And you have drawn no conclusions concerning this particular matter?

A. No, sir.

Q. And just to make sure I understand now...you



1 do remember seeing his name in the paper?

2 A. Yes.

3 Q. And you do remember having heard his name  
4 on television, but you paid no particular atten-  
5 tion to this. In other words it is just a name  
6 as far as you are concerned at the present time?

7 A. It is just a name.

8 Q. And this is your only knowledge of Mr.  
9 Woodmansee...I have in mind your husband's part-  
10 time occupation as an auxillary trooper. Have  
11 you ever...you have never discussed Mr. Woodmansee  
12 with him?

13 A. No, sir.

14 Q. Would the fact that you have heard the name  
15 Bernard Woodmansee on television and you have  
16 also read the name in the paper, in any way  
17 affect your ability to sit on this case, or  
18 affect your impartiality?

19 A. I do not believe so.

20 Q. Now you understand what we are trying to do  
21 here, is to select a jury without bias and with-  
22 out prejudice. Can you honestly state to the  
23 Court and counsel you have no bias or prejudice  
24 as far as Mr. Woodmansee is concerned, one way  
25 or another?



19

1 A. No, sir, I do not.

2 Q. Mr. Kilmartin, do you have any question  
3 you wish to present to the Court to ask of this  
4 prospective juror?

5 MR. KILMARTIN: Yes, Your Honor, may I approach  
6 the bench?

7 (The following is a bench conference)

8 MR. KILMARTIN: Your Honor, we would request  
9 that the Court ask her a specific question rela-  
10 tive to whether she has any general impressions  
11 that her recognition of Bernard's name stems  
12 from notoriety or his general reputation, and  
13 in addition we would request not merely of this  
14 person who has indicated prior knowledge of  
15 Bernard Woodmansee, but each and every person  
16 that the question be posed to.

17 THE COURT: There was notoriety on what?

18 MR. KILMARTIN: If she had the general impression  
19 ...she recognizes the name as a result of his  
20 general notoriety.

21 THE COURT: Or what?

22 MR. KILMARTIN: As opposed to just general repu-  
23 tation. We would ask that with this prospective  
24 juror and with each and every prospective juror  
25 who indicates a recognition of Bernard Woodmansee



20

1 ...that the question be posed in the manner and  
2 according to the sequence outlined in defendant  
3 Woodmansee's Request for Voir Dire, specifically  
4 entitled both on the index and on the page,  
5 "Defendant's Prior Record".

6 MR. O'NEILL: This is not in terms of request  
7 ...the Court may already have it in mind...I  
8 think Mrs. Johnson had one other area.

9 THE COURT: No, that was Mrs. Ball.

10 MR. O'NEILL: I have one on Mrs. Johnson...I  
11 have a specific note on that one...something  
12 about a relative or someone being convicted on  
13 another offense.

14 THE COURT: What was it?

15 MR. O'NEILL: I think the question was asked  
16 she or a close friend or relative had been con-  
17 victed of criminal activity and she said yes,  
18 convicted.

19 THE COURT: I made a mistake...I thought it was number three

20 MR. LINNAN: Three didn't say anything in fact,  
21 Your Honor.

22 THE COURT: All right I think I had better...I should have  
23 had number one down. We will get number three  
24 switched to another room.

25 MR. KILMARTIN: Three is in the right group?

1     THE COURT:   I made a mistake on Johnson and put her down as  
2                   three...I should have put her down as number one.  
3                   Now if I change three to one it will be all  
4                   right.

5                   (End of bench conference)

6     THE COURT:   All right Mrs. Johnson, one other matter I  
7                   would like to ask you about, and that is whether  
8                   you or a close friend or relative has ever been  
9                   arrested and charged with a criminal violation.  
10                  I would like to know what the degree of relation-  
11                  ship to you was?

12                 A.   He is my brother.

13                 Q.   He is your brother, and what was the nature  
14                   of the offense?

15                 A.   I am not exactly sure what it is called, but  
16                   he was involved in a fight and the person died.

17                 Q.   I see, and was he convicted?

18                 A.   I believe he was, yes.

19                 Q.   Do you recall whether or not there was a jury  
20                   trial?

21                 A.   No, I am not sure...this took place out in  
22                   California.

23                 Q.   Where were you at the time?

24                 A.   Here in Vermont.

25                 Q.   How long ago was this?



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A. Six years ago.

Q. Do you know whether or not he received any type of sentence or fine?

A. Yes, I do. He was sentenced to two to seven years.

Q. Did this leave any impression on you one way or another....in other words does this leave you bitter towards the criminal justice system, that your brother didn't receive a fair trial, anything about this conviction that would in anyway affect your sitting on this case and rendering a fair verdict?

A. My only concern with that is that I felt he should have had psychotherapy or therapy of some sort to clear his mind...to help him understand what happened...what was going on.

Q. You mean after the fact in other words?

A. Yes.

Q. That he receive some sort of psychiatric help or treatment after he had been found guilty; is that right?

A. Yes.

Q. Let's turn our attention to this case. Would you have any difficulty in this case, because of your brother's experience, in judging these

1 defendants fairly and impartially, based solely  
2 on the evidence in the case?

3 A. I do not think I would be prejudiced.

4 Q. You could listen to the evidence, and your  
5 determination would be based on the evidence of  
6 the case?

7 A. I think so.

8 Q. Thank you very much. I will ask you then  
9 if you will...any additional questions you want  
10 to submit, Mr. Kilmartin...having in mind what  
11 you have already requested with respect to her  
12 brother's situation?

13 MR. KILMARTIN: No, Your Honor, thank you.

14 THE COURT: Mrs. Johnson, I will ask you to join the group  
15 out this door in the Petty Jury Room please.  
16 Don't discuss the case with any of the jurors  
17 when you go out there. And now perhaps to clear  
18 up the confusion at the bench, it was Mrs. Johnson  
19 who indicated that she did have a close relative  
20 who had been charged with a criminal violation,  
21 and when I made a note of her name rather than  
22 putting her down as number one I inadvertently  
23 put it down as number three...that is what led  
24 to the confusion. Juror number three made no  
25 response....once I make that correction, to any



1 of the questions that would require her individual  
2 indication...so I am going to ask the United  
3 States Marshal at the appropriate time, not  
4 right now, if he will have juror number three  
5 report to the Petty Jury Room, but at the same  
6 time bring in juror number five for individual  
7 interrogation in the box.

8 (The Marshal does so and juror number five,  
9 Mr. Desrochers, enters the Courtroom)

10 THE COURT: Mr. Desrochers, in response to a question that  
11 I asked, you indicated that you had heard of  
12 Mr. Woodmansee; is that correct?

13 A. Yes, Your Honor.

14 Q. And would you advise the Court and counsel  
15 and the defendant please as to what...in what  
16 connection you heard of Mr. Woodmansee?

17 A. It must have been on the news or something.  
18 I didn't remember the details, but this morning  
19 when you read...when you first read what the  
20 case was, the name, you know, was very familiar.

21 Q. And you heard the name prior to the time  
22 that you heard it this morning, other than in  
23 connection with this case do you know?

24 A. No.

25 Q. So when I read the indictment to you this

1 four people, and this most recent call I have  
2 observed no physical or oral response to those  
3 questions, and I have no way of knowing there is  
4 a record to demonstrate them.

5 THE COURT: I believe there has been no response.

6 MR. KILMARTIN: There are many questions which  
7 require an affirmative response in order for the  
8 Court to pass on to the next one.

9 MR. KUPERSMITH: Or alternative answers and no  
10 response.

11 THE COURT: I assume if there is any response the record  
12 isn't going to indicate any response...that is  
13 the customary way. The record should show when  
14 I ask this question I look specifically at the  
15 jurors to see if they are going to indicate a  
16 yes or no answer of any kind. This is the cus-  
17 tomary way it has been done in this Court from  
18 time immemorial, and probably will continue to  
19 be done until such time as somebody tells me it  
20 is improper.

21 MR. KILMARTIN: My point mainly as long as it is  
22 treated as a negative response, one expects a  
23 no answer, and there are some questions that  
24 have been asked by the Court which did not require  
25 the raising of hands and would require a logical



1 response.

2 THE COURT: If there was a response I expect the jurors are  
3 going to speak up. I assume by their silence  
4 that there is no opinion they wish to report in  
5 part to the Court, in answer to those questions.  
6 I will ask them specifically when they get them  
7 in if there is anybody having any difficulty  
8 with that proposition.

9 MR. AGEL: One thing, Your Honor, there is some  
10 answer, two previous answers and I do not think  
11 there is any specific question...what articles  
12 are you referring to.

13 THE COURT: She said in connection with this transaction?

14 MR. AGEL: Did she?

15 MR. KUPERSMITH: Your Honor, would you inquire  
16 when she and her friends were having the general  
17 discussion about Bernard Woodmansee whether any  
18 of the others were discussed, and for that matter  
19 if they weren't, why were they concentrating on  
20 Mr. Woodmansee.

21 MR. KILMARTIN: And what were they discussing  
22 about him.

23 MR. KUPERSMITH: And what were they discussing  
24 about him.

25 THE COURT: I have asked her and she said a general discussion.



- 1 A. No.
- 2 Q. Mr. Woodmansee lives in Burlington. Are you
- 3 acquainted with him?
- 4 A. I have read about him in the paper.
- 5 Q. You are not related to him?
- 6 A. No, I am not.
- 7 Q. You do not have any personal acquaintance
- 8 with him?
- 9 A. No.
- 10 Q. You haven't had any dealings with him?
- 11 A. No, I haven't.
- 12 Q. However, you have heard of him by the fact
- 13 you have read about him in the paper?
- 14 A. Yes.
- 15 Q. Would you tell me what you recall reading
- 16 about him?
- 17 A. Not really...it is nothing about him...this
- 18 is from years ago.
- 19 Q. In connection with certain activities?
- 20 A. Yes.
- 21 Q. What type of activities?
- 22 A. I can't recall.
- 23 Q. Would it be criminal activities?
- 24 A. Yes, they were.
- 25 Q. You do not recall any specific activities in



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that regard?

A. No.

Q. And can you advise me anything at all about those activities as you recall?

A. No.

Q. Other than the fact you have read some years ago about Mr. Woodmansee in the paper...what paper was it, by the way.

A. Free Press.

Q. Do you have any knowledge concerning Mr. Woodmansee from any other source?

A. No, I don't.

Q. Would the fact that you did read about Mr. Woodmansee in the papers, and you have a feeling those articles refer to criminal activities, would those in any way prejudice you against Mr. Woodmansee or would you be able to give him a fair trial based on the evidence in this case?

A. Fair trial.

Q. You would not be prejudiced?

A. No.

Q. You understand Mr. Woodmansee is to be tried and his guilt or innocence determined upon evidence brought here in Court?

A. Yes.



1 Q. And would you follow the instructions of law  
2 as given to you by the Court as they might apply  
3 to this case?  
4 A. Yes.  
5 Q. How about defendant Jacky DuBray, are you  
6 acquainted with him?  
7 A. No.  
8 Q. You are not related to him...to your knowledge  
9 you haven't had any dealings with him?  
10 A. No.  
11 Q. Have you read about Mr. DuBray or read any-  
12 thing about him?  
13 A. No.  
14 Q. Know anything about Mr. DuBray from any source  
15 whatsoever?  
16 A. No, I do not.  
17 Q. How about Mr. Hamlin...are you acquainted with  
18 him, related to him or had any dealings with him  
19 or heard about Mr. Hamlin?  
20 A. No.  
21 Q. No knowledge whatsoever?  
22 A. No knowledge whatsoever.  
23 Q. Mrs. Reynolds who also lives in Essex...are  
24 you acquainted with her?  
25 A. No, I am not.





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Q. Never had any dealings with her, not related to her, have you read about Mrs. Reynolds or heard anything about her?

A. No, I have not.

Q. Heard anything about her. By raising your hand would you indicate if you have any knowledge at all concerning this case?

A. No, I haven't.

Q. Have you heard or read anything about this particular case?

A. No, I haven't.

Q. Have you talked to anybody about the case?

A. No.

Q. Do you have any reason as to why you would not be content to have your case tried by someone in your frame of mind if you were one of the defendants on trial here today charged with the same offense, or you were the counsel for the defendants or you were the United States Attorney.

A. What was the start of that question.

Q. I want to know about your present frame of mind. Would you be willing to be tried by yourself?

A. Yes, I trust myself.

Q. If for any reason you would hesitate to return



1 a verdict of guilty, would you have any difficulty  
2 or any hesitation in returning a verdict of guilty  
3 for the Government if the Government proves its  
4 case beyond a reasonable doubt, or would you have  
5 any hesitation in failing to return a verdict of  
6 not guilty if the Government failed to prove its  
7 case beyond a reasonable doubt?

8 A. No.

9 Q. Would you tend to be prejudiced either for or  
10 against the United States or any of the defendants  
11 in this case because of the nature of the case or  
12 any reason whatsoever?

13 A. No.

14 Q. Is there any reason at all why you think you  
15 would be unable to sit and render a fair and  
16 impartial verdict following the instructions of  
17 law given by the Court?

18 A. No.

19 (The following is a bench conference)

20 THE COURT: Anything you wish to say with respect to this  
21 gentleman?

22 MR. AGEL: He is very candid...no.

23 MR. O'NEILL: Nothing.

24 THE COURT: All right then we will have him retire and you  
25 fellows are ready to go on the challenges.



1           MR. KILMARTIN: I think we are. We want to visit  
2           on the preemptories now.

3           THE COURT: I thought you had...you spent quite a long time  
4           up there together. The defendants, as I under-  
5           stand it, waived both of their challenges at this  
6           juncture, leaving the Government with one  
7           challenge at this time?

8           MR. O'NEILL: Number eleven, Your Honor.

9           THE COURT: Let me think of how best to handle this. It would  
10          seem to be expeditious if we handle it the same  
11          way

12          MR. KUPERSMITH: I would consent to that.  
13          (Close of bench conference)

14          THE COURT: Mr. Andrews, you are excused at this time subject  
15          to call by the Clerk as to your future services.  
16          We thank you very much for the time you have  
17          spent here today. You are free to go.

18          (The following is a bench conference)

19          THE COURT: Gentlemen, with respect to bringing on five,  
20          which I am perfectly agreeable to this procedure,  
21          but I would want an understanding that if there  
22          was a challenge for cause as to the juror number  
23          eleven, it would be the next juror in line who  
24          would be expected to fill in. Do you follow me?

25          MR. KILMARTIN: Yes, no problem.



1 our challenges are joint or individual, so that  
2 we would further divide the remaining challenges  
3 fairly?

4 THE COURT: We went all through that yesterday Mr. Kilmartin.

5 MR. KILMARTIN: All right.

6 THE COURT: As far as I am concerned you have twelve chal-  
7 lenges jointly, as defendants. In the event  
8 of dispute between you, which, if you can't get  
9 together, and I have never had a case when  
10 counsel for the defendants didn't ultimately get  
11 together.

12 MR. KILMARTIN: My point is this...suppose we  
13 exercise the first two challenges jointly and  
14 then because of the change in the composition of  
15 the panel we can no longer agree.

16 THE COURT: You used up one of yours,.....Mr. Linnan used up  
17 one of his. Mr. Marshal, bring in the jury  
18 please.

19 (At this point the jury panel is brought into  
20 the room)

21 THE COURT: Since counsel are ready to exercise their chal-  
22 lenges they can approach the bench.

23 (The following is a bench conference)

24 MR. O'NEILL: Number seven.

25 MR. KILMARTIN: John Desrochers, number five.



1 Q What did he say?

2 A He said, "Fine. Let me know, call me in the morning  
3 and let me know where you want me to meet you in  
4 Montpelier." I said, "I'd go do that."

5 Q You then called him on the next day?

6 A Yes, I did.

7 Q That would have been May 23, 1976?

8 A Yes, right.

9 Q Did you make arrangements, or did he make arrangements  
10 to meet with you?

11 A Yeah.

12 Q All right.

13 A And I told him to meet me at the Stockyard Lounge in  
14 Montpelier.

15 Q Did you meet him there?

16 A Yes, I did.

17 Q Who else was there with him?

18 A Roy and Jack, same two people that I saw at the house  
19 Friday night.

20 Q And what happened when you met with them?

21 A Well, he said, "Where you been? I have been waiting  
22 for you. I'm having a heart attack waiting for this  
23 money." I said, well, I said, "See you." So we went  
24 into the bathroom. I handed him the bag containing  
25 thirty-nine hundred dollars, and he handed me an

1 envelope containing six thousand dollars more worth  
2 of those traveler's checks, and we was supposed to  
3 meet in White River at the Hotel Coolidge next day at  
4 noon to collect six thousand.

5 Q And then you left?

6 A Then I left.

7 Q What did you do with the six thousand dollars in  
8 traveler's checks that he gave you at that time?

9 A I brought the six thousand dollars worth of traveler's  
10 checks with me up to Redstone, State Police there and  
11 they held them until Nick Ruggiero picked them up.

12 Q He is a member of the Vermont State Police?

13 A Yes.



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

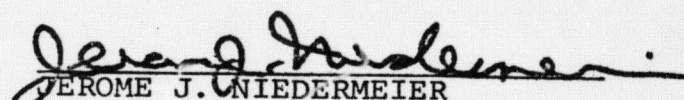
v.

BERNARD WOODMANSEE, SR.,  
JACKY E. DuBRAY and  
ROY M. HAMLIN

Docket No. 77-1022,  
1023, 1024

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of June, 1977, mailed two copies of the attached Brief and Appendix to Duncan F. Kilmartin, Esq., Michael Kupersmith, Esq., and James D. Linnan, Esq., counsel for Appellants, postage prepaid.

  
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